

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD ON
NOVEMBER 8, 2005

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: CHAIRMAN, BRIAN FLORENCE
MEMBERS: EDWARD GALLAGHER
TONY POPOVSKI
VICTORIA SELVA
DAWN SLOSSON

ABSENT: NONE

ALSO PRESENT: COLLEEN O'CONNOR, TOWNSHIP ATTORNEY
JERRY SCHMEISER, PLANNING CONSULTANT
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman FLORENCE called the meeting to order at 7:04 P.M.

1. Roll Call.

Secretary SLOSSON called the Roll Call. All members present.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. *(with any corrections)*
Note: All fees have been received and all property owners were notified by mail

Chairman FLORENCE stated a letter had been received from the petitioner for agenda item 6 to be withdrawn, item 7 to be tabled and item 14 to be tabled indefinitely.

MOTION by GALLAGHER seconded by SELVA to approve the agenda as amended.

MOTION carried.

4. Approval of the previous meeting minutes:

MOTION by POPOVSKI seconded by GALLAGHER to approve the meeting minutes of September 13, 2005 as presented.

MOTION carried.

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PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
(5) Peter and Corrina Freeman Permanent Parcel No. 08-17-251-003	Section 10.0504(E)(3) 10.0504(A)
(6) Phillips Sign and Lighting Permanent Parcel No. 08-28-101-010	Section 10.1065(I)(3)
(7) Russell Branham Permanent Parcel No. 08-05-127-029	Section 10.0704(B)(2)
(8) GTR Builders, Inc. Permanent Parcel No. 08-26-301-007 08-26301-010 08-26-301-017	Section 10.0335 10.0704(A)(3)(b)
(9) BP Gas Station Permanent Parcel No. 08-31-300-031	Section 10.2402(C)(6)
(10) Finazzo Building, LLC Permanent Parcel No. 08-04-429-001	Section 10.0704(B)(3)
(11) Marcast Development Permanent Parcel No. 08-15-445-011 08-15-446-001	Section 10.0704(D)(1) 10.0704(D)(2)
(12) Nick Kyprianides Permanent Parcel No. 08-29-352-025	Section 10.1605(6)(c)
(13) Romeo Plank Commons, LLC Permanent Parcel No. 08-06-200-049	Section 10.0347
(14) Frank Jonna Permanent Parcel No. 08-34-300-027	Section 10.0323(5)(C)
(15) Luigi Ferdinandi & Son Cement Permanent Parcel No. 08-27-306-001	Section 10.0704(D)(1) 10.0704(D)(3)

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- (16) American Land Inc. Section 10.0311
Permanent Parcel No. 08-33-353-001 10.1805
08-33-353-002

- (17) Sound Building Company Section 10.0314(C)
Permanent Parcel No. 08-29-223-008

5. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section: 10.0504(E)(3)-Request to reduce rear yard from 50 feet to 25 feet.
Section 10.0504(A)-Request to reduce minimum lot area from 30,000 square feet to 17,300 square feet.
Located on west side of Romeo Plank Road, approximately ½ mile south of 24 Mile Road; Section 17; Peter and Corrina Freeman, Petitioner. Permanent Parcel No. 08-17-251-003.

Chairman FLORENCE read the findings and recommendation of November 3, 2005. They are as follows:

The matter was considered by the Zoning Board of Appeals at its meetings of May 10, 2005 and July 12, 2005, and September 13, 2005 and was tabled at the request of the petitioner.

The petitioner is requesting variances from the provisions of the R-1-S zoning district to reduce the depth of the lot and the rear yard setback to have existing lot and structures property varianced for future building permits. The property is zoned R-1-S.

The property is trapezoidal in shape with the house situated parallel to Romeo Plank. The front yard setback from the center line of Romeo Plank is 78'. The zoning ordinance requires a 90' setback. The rear yard is 29' and the zoning ordinance requires 50' in an R-1-S zone. The parcel contains approximately 14,750 square feet including the right of way for Romeo Plank.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the setback requirements would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same setback requirements which are evidence that the proper setbacks would not be unnecessarily burdensome. The garage wing of the residence is already encroaching in the required rear yard setback and the front of the house is encroaching in the required front yard setback.

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2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the setback requirements. As a result the other property owners do not have the opportunity to make use of the required setbacks.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the dwelling from maintaining the property setbacks. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

The following letter of explanation was submitted by the petitioner dated November 7, 2005 as follows:

“This letter is in regards to our variance that is before the Zoning Board of Appeals requesting a reduction in lot size and a change to the rear and front setbacks to meet the existing lot size and buildings. The request for variance was prompted by an interest in adding an addition onto the existing house. The 12 foot by 16 foot addition would be in the same location as the wood deck shown on the attached drawing. In gathering information on the requirements we found some discrepancies in our folder on file at the Township office. Based on a discussion with the Building Department we were informed that a variance would be needed because we did not meet the minimum set back for this project. I explained that based on the drawings in our file and approved permits that the proposed addition would not exceed the current extension of the garage. There are several drawings on file, which do not represent what was approved by the Zoning Board or the Building Department. As no previous variance could be located the Building Department provided the necessary forms to submit an application to the ZBA.

After our initial meeting of the ZBA it was clear that there was some confusion as to the information provided and that the matter be tabled so that additional information could be gathered. Our search of information has resulted in an approved parcel being split and parcel number being filed an on record (see attached). **Based on protocol for parceling a lot that does not meet the minimum requirements of an R1S zoning ordinance, a variance should have been granted.** Our search has found no record of a variance being given. As a result of the signed document at the land registry a legal property was created; from which building permits and a certificate of occupancy were issued.

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The resulting building permits allowed the building of the main house with septic system and subsequent garage to the R1S zoning ordinance. Here too, based on the an R1S zoning ordinance, theses permits could not have been approved without a variance to allow for the reduction in front and rear setbacks. Again our search, as well as your office could not find any variance on record. As a result, based on their approvals and resulting occupancy approval the setbacks were arbitrarily set to the outer limits of the buildings.

I am not asking for any variance outside what currently exists and would normally have been approved by your office and the ZBA. I am simply asking that the records for this property accurately reflect what has been approved to date in oversight.

In regards to these discrepancies, I would like your consideration and recommendations on how your office will make corrections to our records.

If the correct forum is the variance before the ZBA, please advise so that the request can accurately state the requirements (if they are not clearly understood on the current request). Thus any future inquiries for building permits could be accurately approved and assessed by your office. Eliminating the additional expenses of the next owner who looks at this file to discover the same discrepancies.

Is this letter sufficient for your office to take action or is our variance request the appropriate forum to continue this action? We are trusting that we can work together in resolving this issue without any additional arbitration.

Thank you for your patience and continued support.”

Peter and Corrina Freeman, petitioners, were in attendance and stated that if the item needs to be tabled for further research and discussion that would be fine.

Corrina Freeman stated that since the inception of the parcel in the late 1970's that protocol has not been followed and as property owners we are asking for your help to investigate the site.

Colleen O'connor, Township Attorney, suggested that the item be tabled to ensure the petitioner's letter dated November 7, 2005 correctly matches the Building Department records.

Jerome R. Schmeiser, Planning Consultant, stated that any addition onto the back of the home will encroach into the rear yard setback. Furthermore, the size of the property and how it was created is a separate issue.

Public Portion: None.

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MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

The following resolution was offered by GALLAGHER and seconded by SELVA:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that pursuant to the action of the Board to grant the requested variance of Section 10.0504(E)(3)-Request to reduce rear yard from 50 feet to 25 feet; Located on the west side of Romeo Plank Road, approximately ½ mile south of 24 Mile Road; Section 17; Peter and Corrina Freeman, Petitioner. Permanent Parcel No. 08-17-251-003. The variance was granted since the splitting of the parcel was a mistake and this will bring the parcels into conformance.

MOTION carried.

The following resolution was offered by GALLAGHER and seconded by SELVA:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that pursuant to the action of the Board to grant the requested variance of Section 10.0504(A)-Request to reduce minimum lot area from 30,000 square feet to 17,300 square feet; Located on the west side of Romeo Plank Road, approximately ½ mile south of 24 Mile Road; Section 17; Peter and Corrina Freeman, Petitioner. Permanent Parcel No. 08-17-251-003. The variance was granted since the splitting of the parcel was a mistake and this will bring the parcels into conformance.

MOTION carried.

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6. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section: 10.1065(I)(3)-Requesting a sign larger than 1/3 size of the ground sign.
Located on southeast corner of 22 Mile and Romeo Plank Roads; Section 28; Phillips Sign and Lighting, Petitioner. Permanent Parcel No. 08-28-101-010.

Withdrawn by the petitioner's letter dated November 2, 2005.

7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section: 10.0704b2-Request to allow an increase in the height of a residential structure from 25 feet to 26 feet 6 inches.
Located ½ mile south of 26 Mile Road, east of Romeo Plank Road; Section 5; Russell Branham, Petitioner. Permanent Parcel No. 08-05-127-039.

Tabled by the petitioner's letter dated November 2, 2005.

8. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section: 10.0335- Request to reduce the frontage of 70' to 0' and to reduce the frontage from 70 feet to 0 feet.
Section 10.0704A.3.b-Request to reduce the frontage of 70' to 0' and to reduce the frontage from 70 feet to 0 feet.
Located on ½ mile north of 21 Mile Road, 200 feet east of Card Road; Section 26; GTR Builders, Inc., Petitioner. Permanent Parcel Nos. 08-26-301-007, 08-26-301-010 and 08-26-301-017.

Chairman FLORENCE read the findings and recommendations of November 3, 2005. They are as follows:

The petitioner is requesting permission to create a parcel without street frontage. The property in question is surrounding land and development for residential purposes. The development to the east and south provide stub street access to the parcel in question so that if it were developed in a fashion similar to these abutting properties, that road frontage and access would be provided.

The property is zoned R-1 and contains 9.09 acres and is master planned as single family residential

The petitioner indicates that it is the intention to develop a residential subdivision with access to the east and south through the Woodberry Estates Condo project and the Hidden Meadows Subdivision.

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RECOMMENDATION:

It is the petitioner's intention to develop the property in question as a single family Subdivision tying to the Woodberry Estates Condos which has public streets, and the Hidden Meadow Subdivision to the south. Therefore, the request is reasonable since the variance is necessary to allow the applicant an opportunity to develop the parcel in a manner compatible with adjoining residential development to the south and east. Further, the development provides the opportunity to connect the existing street system, thus providing assurances of public safety. This recommendation is made with the understanding that the petitioner will enter into a binding agreement to be recorded with the Macomb County Register of Deeds that the property will be developed as a single family subdivision tying into Clairfield Drive in the Woodberry Estates Condominium project and the Hidden Meadows Drive in the Hidden Meadows Subdivision to the south.

The following letter of explanation of was submitted by the petitioner dated September 9, 2005 as follows:

"On behalf of our client, we are requesting a variance from Section 10.0335 and 10.0704(A)(3)(b) of the Macomb Township Zoning Ordinance which requires all parcels to have a minimum road frontage.

Our records indicate that these parcels were established prior to 1973, long before our client acquired the property. Strict enforcement of the ordinance would cause unnecessary hardship and deprive the property owner the right to develop his property.

The intent is to develop a residential subdivision which is consistent with the Township Master Plan for the area. The resulting development will provide the required frontage."

Craig Duckwitz, representative, was in attendance.

Public Portion: None.

MOTION by GALLAGHER seconded by SLOSSON to close the public portion.

MOTION carried.

The following resolution was offered by SELVA and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

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Now, therefore, be it resolved that pursuant to the action of the Board to grant the requested variance of Section 10.0335-Request to reduce the frontage of 70 feet to 0 feet; Located on the north side of 21 Mile Road, ½ mile east of Card Road; Section 26; GTR Builders, Inc., Petitioner. Permanent Parcel No. 08-26-301-007, 08-26-301-010 and 08-26-301-017. This variance is conditioned with the understanding that the petitioner will enter into a binding agreement to be recorded with the Macomb County Register of Deeds that the property will be developed as a single family subdivision tying into Clairfield Drive in the Woodberry Estates Condominium project and the Hidden Meadows Drive in the Hidden Meadows Subdivision to the south.

MOTION carried.

The following resolution was offered by SELVA and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that pursuant to the action of the Board to grant the requested variance of Section 10.0335-Request to reduce the frontage of 70 feet to 0 feet; Located on the north side of 21 Mile Road, ½ mile east of Card Road; Section 26; GTR Builders, Inc., Petitioner. Permanent Parcel No. 08-26-301-007, 08-26-301-010 and 08-26-301-017. This variance is conditioned with the understanding that the petitioner will enter into a binding agreement to be recorded with the Macomb County Register of Deeds that the property will be developed as a single family subdivision tying into Clairfield Drive in the Woodberry Estates Condominium project and the Hidden Meadows Drive in the Hidden Meadows Subdivision to the south.

MOTION carried.

9. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section: 10.2402(c)(6)-Requesting the extension of an approved site plan.
Located on northeast corner of Hall and Hayes Roads; Section 31; Hall & Hayes Properties, Petitioner. Permanent Parcel No. 08-31-300-031.

Chairman FLORENCE read the findings and recommendation of November 4, 2005. They are as follows:

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The petitioner has previously requested permission to be granted an extension of a site plan for a car wash on the above described property from July 15, 2005 to July 15, 2006.

On August 16, 2005 the Planning Commission denied the extension. The petitioner is requesting that the Board of Appeals override the action of the Planning Commission to deny the extension of the site plan approval.

RECOMMENDATION:

It is recommended that the variance request to override the Planning Commission be denied.

The following letter of explanation dated September 13, 2005 was submitted by the petitioner as follows:

“The site plan for construction of a drive-thru car wash to replace the closed drive-in car wash was approved in July of 2003. An extension was granted to July 15, 2005. A request for a second extension was timely filed and denied by the Planning Commission on August 16, 2005. The Planning Commission on its own motion tabled the application for 2 weeks without explanation and did not raise any concerns or issues that needed to be addressed. The decision was not based on any sound reason and was arbitrary. No changes to the approved site were requested and no objections to the approved site plan were raised. If the extension is not granted, the owner will be required to resubmit a new application. The resulting waste of time and additional expense in starting the process over is an unnecessary hardship. No valid objection was raised during the meeting. This site is zoned to permit such a car wash. The decision was arbitrary and deprives the owner of its right to operate a drive thru car wash.”

Paul Valentino, representative, was in attendance, and stated that the Planning Commission denial be overturned for the reason that we have an approved site plan. There have been no changes to the character of this property or the surrounding property and there is no public safety issue. Further, when the Planning Commission denied the extension of time, they did not come forth with any basis or reason for the objection. The Planning Commission also knew that the owners were in negotiations with Starbucks to add to the site. Those negotiations fell through and the petitioner has since sought an extension to proceed forward to build the car wash. There was an existing car wash on the site, which now sits vacant and has not been used since 2004 when they acquired the site. Lastly, he indicated what they are asking for makes perfect sense. There has not been any changes made to the site nor were any problems raised with the site plan. The only comment made during the Planning Commission hearing was that we typically deny second requests. That is arbitrary, capricious and causes an undue hardship to the owners. If this is denied, they will have to go back and submit the same site plan, go through the review process and spend thousands and thousands of dollars so they can get the site approved to build the car wash

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that this C-4 property is entitled to have on it. It is unreasonable that the Planning Commission would take such a harsh stand under these circumstances. We had an approved site plan and we had a reason why it wasn't constructed because of the Starbucks deal that being negotiated.

Chairman FLORENCE asked what the date of the original site plan was.

Paul Valentino stated July 14, 2004.

Chairman FLORENCE questioned Jerome R. Schmeiser by stating that a site plan is approved for one year. They have since gone through their 2005 approval and were looking to go through 2006.

Jerome R. Schmeiser, Planning Consultant, stated that was correct.

Member SELVA questioned why we had nothing from the Planning Commission.

Member GALLAGHER stated it was denied because there are other things than whats presented here. (Paul Valentino interrupted by stating there is nothing and that is inaccurate) There is an electric transformer box located in the right-of-way (Paul Valentino stated that was inaccurate)

Member GALLAGHER stated he would not state anything more.

Paul Valentino stated that nothing about an electric transformer was mentioned at the Planning Commission meeting. Right now is the first time that this issue has been raised. The fact is that they had no basis other than they typically deny second requests. Its an undue, unjust ruling and decision that needs to be reversed, so that they can construct the car wash that's been approved. There is nothing that has ever been raised that states something has been changed. That would be the only reasonable basis to deny the extension. We are asking that the decision be overturned so they can proceed with their approved site plan.

Public Portion: None.

MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

Member SLOSSON asked if the Board wants to see why this was denied by the Planning Commission before we take a vote. There seems to be some discrepancy as to why it was denied. She indicated she would struggle to make a vote not knowing why it was denied. There is argument but is there any documentation that would address that question.

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Jerome R. Schmeiser, Planning Consultant, stated the Planning Commission felt they did not want to grant an extension. This would have been their second extension. Further, there were other plans that had been submitted that were being considered for the site. There are a lot of unknowns on the property and the Commission felt they did not want to grant an extension.

MOTION by GALLAGHER to deny the variance request of Section 10.2402(C)(6).

Member GALLAGHER stated the Planning Commission had a lot more information provided than what's here and that's why they denied it. He indicated there is not enough information here to override the decision.

Member SLOSSON stated she did not feel comfortable overriding or not overriding, without further information. There is not enough information from the Planning Commission why the denial took place.

Motion withdrawn by GALLAGHER.

MOTION by SELVA seconded by SLOSSON to table the variance request of Section 10.2402(C)(6)-Requesting the extension of an approved site plan; Located on the northeast corner of Hall Road and Hayes Road; Section 31; BP Gas Station, Petitioner. Permanent Parcel No. 08-31-300-031. The variance was tabled to allow for further investigation.

MOTION carried.

Chairman FLORENCE stated it was his understanding of the tabling was to get information from the Planning Commission regarding the circumstances behind their denial.

Paul Valentino stated that with all due respect, if the Planning Commission had some hidden agenda that they did not make known during the meeting and let me address when we asked for the extension (Chairman FLORENCE stated that unfortunately right now we have no way of determining that) If what you're suggesting to me is that they get to go into the star chamber, pull out whatever document that they never brought to me or the Planning Commission meeting and never raised, and your going to consider that, I have a real problem with that.

Chairman FLORENCE stated that unfortunately we have no way of determining any of that right now.

Paul Valentino questioned what the procedure would be.

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Chairman FLORENCE stated the information right now is table the request, which has been approved. The next question is how long do we table it for. (Paul Valentino stated he would like it as short as possible)

Chairman FLORENCE stated the next regular meeting was the second Tuesday in January 2006. We can put it back on that particular agenda and continue this discussion at that point.

Paul Valentino asked with respect to any of the additional information made available to the Zoning Board of Appeals, if he would be previed to that information.

Chairman FLORENCE stated if you have this question, you should present it to the Clerk's Office.

10. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section: 10.0704(B)3-Request to increase the height of the first floor from 5' to 5.82' above the height of the curb elevation.
Located on north side of 25 Mile Road, approximately 700 feet west of Broughton Road; Section 4; Finazzo Building, LLC, Petitioner. Permanent Parcel No. 08-04-429-001.

Chairman FLORENCE read the findings and recommendations of November 3, 2005. They are as follows:

The petitioner is requesting permission to increase the elevation of the first floor by .82 feet above the allowable elevation per the zoning ordinance. According to the application submitted by the petitioner, the only reason given for such a request is that the homeowner wants this option.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the height requirement would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same height requirements which are evidence that the proper height requirement would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the 5 feet height requirement. As a result the other property owners do not have the opportunity to make use of the one foot additional height from the curb elevation.

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There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the height requirement from being maintained 5 feet above the curb elevation. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

The following letter of explanation was submitted by the petitioner dated October 3, 2005 as follows:

- “1) Single Family Construction (2,235) with fully excavated basement with finished first floor elevations at 623.36 instead of 622.36.
- 2) Curb heights vary from highest point of 618.77 to a low of 617.54. These are abnormal because of corner lot, on my model home (lot 7). I would have no problem adding a block to top of wall.
- 3) Because of lowest curb elevation of 617.54, the ordinance does not allow me to install block on top of wall. *Homeowner wants this option.
- 4) I have been told my Mike Badamo from Spalding DeDecker and Bob Beckett from Macomb Township that they would support this variance.”

The following letter dated November 8, 2005 from Spalding DeDecker was also read into the record as follows:

“The comments and concerns set forth in this letter represent the opinions of both the Township and the Macomb Township Water and Sewer Department. We have reviewed the above-variance request and offer the following comments.

The petitioner is requesting a variance from Article VII, Section 10.0704B3 of the Zoning Ordinance which states that ‘The elevation of the structure’s first floor shall be limited to a maximum of five (5) feet above the lowest top of curb elevation on the adjacent roadway along the parcel’s frontage.’ The lowest top of curb, for lot 41, is 517.54 and located at a road catch basin (low point). It is our understanding that the perspective purchaser of the proposed house on lot 41 has requested a basement slightly deeper than the standard 7’10” depth. The request of the deeper basement causes the first floor grade to be 623.36, which creates a difference in grade, between the first floor and lowest top of curb, of 5.82’.

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The main objective of Article VII, Section 10.0704B3 of the Zoning Ordinance was to safeguard against builders raising first floor elevations where natural or proposed grades would not permit, as well as, to avoid incompatibility with surrounding houses. Our calculations show that lot 41 could support a house with a standard depth basement that would conform to the ordinance. Therefore, no hardship is evident and we recommend the variance request (Zoning Ordinance-Article VII, Section 10.0704B3) be denied.

If you have any questions regarding this matter, please contact our office at your convenience.”

Member SELVA excused herself since her house is adjacent to the lot in question.

Vince Finazzo, petitioner, was in attendance and stated that he was unaware of this ordinance. He indicated that he has built homes in other subdivisions approximately 5 to 6 years ago. What has happened is the homeowner has requested this and we told them this would not be a problem. He indicated he was trying to add height onto the basement walls, which would not change the grade. I’m not raising the brick ledge, that remains where it’s at, only the floor height is being raised. If this does not get passed the homeowner will probably walk away from this deal. Lastly, he indicated that he has been in this subdivision for a year and has not sold a home and viewed it as a hardship even though the board may not.

Public Portion: None.

MOTION by SLOSSON seconded by POPOVSKI to close the public portion.

MOTION carried.

MOTION by GALLAGHER seconded by POPOVSKI to deny the variance request of Section 10.0704(B)(3)-Request to increase the height of the first floor from 5 feet to 5.82 feet; Located on the north side of 25 Mile Road, approximately 700 feet west of Broughton Road; Section 4; Finazzo Building, LLC, Petitioner. Permanent Parcel No. 08-04-429-001. The variance was denied since it was feasible and possible to build a conforming home on this lot and to be within the confines of the Township Zoning Ordinance. There is no practical difficulty of having a home built on this particular piece of property.

MOTION carried.

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11. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section: 10.0704D1 and 10.0704D2-Request to reduce the landscape wall setback from 55 feet to 3 feet AND to reduce the sideyard setback from 7.5 feet to 0 feet.
Located on Northwest and Southwest corners of Castellana Drive and Card Road; Section 15; Marcast Development, Petitioner. Permanent Parcel Nos. 08-15-445-011 & 08-15-446-001.

Chairman FLORENCE read the findings and recommendations of November 3, 2005. They are as follows:

The petitioner is requesting setback variances to allow the installation of the landscape wall and easements. The areas upon which the walls are planned are located on lots 1 and 99 on the northwest and southwest corner of Card and Castellana Drives. The walls are not planned within the established 20' landscape areas of the Castle Mar Subdivision. No site plans have been provided indicating how the walls were constructed.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same setback requirements which are evidence that the proper setback would not be unnecessarily burdensome.

The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the requirements. As a result the other property owners do not have the opportunity to make use of additional property.

The following letter of explanation was submitted by the petitioner dated October 3, 2005 as follows:

“The entrance walls at the entrance of Castle-Mar subdivision extend onto lots 1 & 99 of the Castle-Mar Subdivision. Additionally, the landscape wall on lot 99 encroaches into an existing 12' wide storm sewer easement along the east line and an existing 15' wide sanitary sewer easement along the south line of this lot. Additional easements have been granted to us, the developer, for these improvements. However, according to Spalding DeDecker, an easement encroachment agreement must be obtained for the wall that encroaches into the existing utility easements. In order to resolve the easement encroachment issue, it was brought to our attention from Macomb Township that we need

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a zoning variance. We have filled out the proper application and received affidavits from the owners of lots 1 & 99 of Castle-Mar Subdivision. Please grant the variance in order to resolve the easement encroachment issue. Please call if you have any further questions.”

Simone Mauro, representative, was in attendance and stated the walls are in existence and stated that when the application for preliminary site plan was submitted and approved the landscape requirements were shown on the drawings and the landscape walls were shown on that drawing exactly to where they are constructed today. We were asked to put easements in those walls where the walls exist now and we have recorded easements. This was approximately 1 ½ years ago. Those walls do exist on easements and were constructed according to the building permits that were pulled from Macomb Township and inspected as such and built as such. Since that time houses have been constructed on Lot 1 and Lot 99. For us to be denied this request would create a hardship since the walls would have to be removed, thus leaving the subdivision without any entrance walls or identification or possibly having to file a lawsuit with the Township which could be costly. (Exhibits were presented for the mentioned easements)

Public Portion: None.

MOTION by SELVA seconded by SLOSSON to close the public portion.

MOTION carried.

Discussion was held about the walls being built within the 20 foot landscape easement.

Jerome R. Schmeiser, Planning Consultant, asked if a revised site plan would be submitted to the Planning Commission for their consideration.

Simone Mauro stated the site plan has never changed.

Jerome R. Schmeiser, Planning Consultant, stated the walls had to be within the landscape area easement. There also needs to be a clear vision zone.

Member SELVA asked what needs to be submitted to resolve this other than a variance.

Jerome R. Schmeiser, Planning Consultant, stated a revised plan must be submitted to show the need for the easement.

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MOTION by SELVA seconded by SLOSSON to table the variance of Section 10.0704(D)(1)-Request to reduce the landscape wall setback from 55 feet to 3 feet and Section 10.0704(D)(2)-Request to reduce the sideyard setback from 7.5 feet to 0 feet; Located on the west side of Card Road, 704.65 feet north of 23 Mile Road; Section 15; Marcast Development, Petitioner. Permanent Parcel No. 08-15-445-011 and 08-15-446-001. The variance was tabled to have a site plan submitted and reviewed against the claims being made.

MOTION carried.

- 12 VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section: 10.1605(6)c-Request to increase the size of a wall size from 32 square feet to 57.5 square feet.
Located on the northeast corner of 21 Mile Road and Garfield Road; Section 29; Nick Kyprianides, Petitioner. Permanent Parcel No. 08-29-352-025.

Chairman FLORENCE read the findings and recommendation of November 4, 2005. They are as follows:

The petitioner is requesting allowance to install a sign of 57.5 square feet as opposed to the 32 square feet allowed by the zoning ordinance.

The sign is planned for a restaurant located in a small strip center located on the northeast corner of 21 Mile and Garfield Roads. Garfield is currently under construction and will ultimately tie 21 Mile with 22 Mile Road. The center contains other small business uses and all have signs approximately 32 square feet or less.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the sign size requirement would not unreasonably prevent the ownership from using the property as zoned. Other commercial structures planned in Macomb Township will be required to comply with the same sign size requirements which are evidence that the proper sign size would not be unnecessarily burdensome.
3. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in the commercial developments in Macomb Township. The other owners are or will be required to comply with the 32 square foot sign size requirement. As a result the other property owners do not have the opportunity to make use of larger sign size.

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There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the sign size from being maintained at 32 square feet. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

The variance would amount to increasing the sign size by approximately 55.6%.

The following letter of explanation was submitted by the petitioner dated October 7, 2005 as follows:

“As the legal owner of “The Veranda Family Restaurant”, I strongly believe that proper and efficient exposure through signage is an extremely vital factor in the potential success of my business. I am an experienced businessman who has been involved in the restaurant industry for 38 years, and I am convinced that unless my variance request is granted, my business will suffer considerably. I have complied several points I would like to make and bring to your attention, in hope that they will speak in favor of my request.

Let me begin by stating that, as a restaurant owner, the visibility of my business’s sign is an incredibly important issue. The nature of the food services industry relies heavily on visual advertisement in attracting customers and generating business. Unless this variance request is granted, my establishment will continue to receive little or no attention. I am a new business owner with a new restaurant, and I have invested a good deal of money in trying to establish my business. Unless my request is granted I will not be able to raise the amount of public awareness necessary to support my investment, and I face the possibility of failure.

There are certain characteristics of this property that I feel require special consideration. Most notably, it is the building located furthest from 21 Mile Road, the road most directly responsible for providing visibility and access to the plaza which contains my restaurant. As one of the largest buildings in the area, it is only logical that the signage be in some way relative to the size of the building. My restaurant can be seen and accessed from two major roads, and yet, unless a sign is large enough, it will not be clearly visible from either direction. While a small sign may provide adequate visibility for property closer to the road, this is not the case for my restaurant, which is considerably further away from all passing traffic.

Although I am the current business owner, I played absolutely no role in determining the layout of this particular property, or the plaza it belongs to. Neither, to any degree of my knowledge, did the previous owner. It was not my decision to construct this property at such a great distance from the road, and I now find myself in a difficult position, trying to overcome these unfortunate circumstances in a way most beneficial to my business.

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I do not feel that granting my request will adversely impact any properties in the surrounding areas, nor will it be viewed as any form of special privilege. I am merely requesting that, as an owner of a somewhat large business, my establishment receive adequate exposure through signage. Several other properties in close proximity to mine appear to have signs larger than those of the standard regulation, specifically, the "Sav-Mor Drugs" drug store directly across the street from my plaza. If such exceptions can be and are made, I feel that my particular establishment qualifies as requiring more adequate signage. I do not believe that my having a slightly larger sign will deny anyone their rights, nor will it hinder their ability to effectively conduct business. I am a business owner and member of the community, and I would like to have my business receive proper visibility. I respectfully ask that you please consider and grant my request so that I may conduct my business in the most efficient and productive manner possible."

Peter Zingas, representative, was in attendance and presented a handout from the landlord stating he was in support of the sign request. The unit that my client is occupying is the end unit of the "L" shaped plaza. In addition we have provided letters from SYSCO drivers that are familiar with the area but have a difficult time finding the restaurant and letters from patrons who also have a difficult time finding the site. Lastly, he presented the shopping center south of 21 Mile Road had larger signs than the plaza in question.

Nick Kyprianides, petitioner, was in attendance and stated that in the restaurant business 75% of the business is dependent upon the signage, being able to see you and identify the location.

Member GALLAGHER asked about the pylon sign and getting a larger slot instead of the provided space.

Peter Zingas stated that those details had been worked out with the other tenant's lease and they cannot ask the landlord to change or break those contracts.

Member SELVA stated that the signage is an issue that has come before this body often. The sign ordinance is currently being reviewed and as the ordinance stands all businesses within the C-2 district are to all have the exact same square footage for their signage identification. Lastly, our job is to keep uniformity within the Township.

Jerome R. Schmeiser, Planning Consultant, stated that just recently Garfield Road was recently opened which carries a lot of traffic which now makes him approximately 50 feet from the road.

Public Portion:

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Reginald Zalewski, 21291 Summerfield, stated this center has been an eye sore prior to the new ownership for the restaurant. This is a legitimate business that is trying to pull together an area that has been dead. Lastly he indicated that he was in favor of the signage request.

Kristy Layne, 21291 Summerfield, stated you can't currently see the sign. The business is an asset to the community and feels that the larger sign being requested would be great for the owner of the restaurant.

MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

MOTION by GALLAGHER seconded by POPOVSKI to deny the variance request of Section 10.1605(6)(c)-Request to increase the size of a wall size from 32 square feet to 57.5 square feet; Located on the northeast corner of 21 Mile Road and Garfield Road; Section 29; Nick Kyprianides, Petitioner. Permanent Parcel No. 08-29-352-025. The variance was denied since there are other ways of letting yourself be known, a larger sign does not prove successful for a business. The following reasons were also given:

Member POPOVSKI stated there was no clear definition of what the practical difficulty would be. The sign is consistent with what we've seen throughout the Township.

Member SELVA stated to deny the request since the boards job is to be consistent and to have the Township conform to the current ordinances. She went on record again as to supporting the idea of having the Township to revisit the ordinance in its entirety and consider changing it.

Member SLOSSON reiterated Member SELVA'S comments.

Chairman FLORENCE stated there are alternative like getting contrasting signage that would help you stand out from surrounding businesses.

MOTION carried.

- 13 **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**
Permission to vary Section: 10.0347-Request to reduce the setback of a building that provides for door openings facing a residential area from 600 feet to 130 feet. Located on southwest corner of 26 Mile Road and Romeo Plank Road; Sectoin 6; Romeo Plank Commons, LLC, Petitioner. Permanent Parcel No. 08-06-200-049.

Chairman FLORENCE read the findings and recommendations of November 4, 2005. They are as follows:

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The petitioner is requesting allowance to create a shopping center with doors facing a residential area closer than 600' as required by the zoning ordinance. Approximately one year ago, the Township amended the zoning ordinance to address the issue of the "megaphoning affect" of noise from commercial and industrial uses into residential areas. Late deliveries and daytime noise has a detrimental affect on the peace of adjoining residential properties. At that time it was felt that the distance and the required greenbelt could diminish the adverse affects of the adjoining incompatible land uses on the residential areas.

Since the time of the creation of the ordinance, other solutions have been considered that would eliminate or at least reduce the adverse affects of commercial/industrial noise for adjoining residents. Such solutions include: the installation of an interior wall system so that the sounds from the interior of the building could not escape or be reduced significantly. In addition, it is also suggested canopy roofs be created over echo of the doors that will direct noises downward instead of outward and upward. These canopies along with the plastic baffle strips can then aid in reducing the noise created.

RECOMMENDATION:

It is recommended that if the petitioner will agree to redesign the entrances and exists opening onto the residential areas to eliminate noise, that the variance be granted. However, if the petitioner cannot solve the noise problem, it is recommended that the variance be denied and the buildings be redesigned so that the doors do not face a residential area.

The following letter of explanation was submitted by the petitioner dated October 7, 2005 as follows:

“Attached with this letter is a variance request application to Section 10.0347 for the above mentioned project. This letter is to serve as a supplemental explanation of the variance request.

Modern commercial buildings have customer entrances in the front and merchandise unloading areas and entry doors in the rear. The south and west sides of this site abut residential or agriculture zoning, as do the south and west building faces of the proposed buildings. The strict enforcement of Section 10.0347 would effectively inflict a 600' setback to the proposed buildings, and would remove 22.9 acres of the 26.3 acre property from being available for building development.

Our office is not knowledgeable about the intent of this Section, though we have been told that it is related to noise issues that have arisen where industrial uses abut residences. First of all, the proposed commercial uses will not generate noise in any fashion close to what an industrial use would. Additionally, our proposed layout is in compliance with the extra C-3 requirements for setback and screening, where the C-3 use abuts residential

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property. Presumably these requirements were developed by the Township to accommodate those situations where C-3 uses abut residences, and include a 6' high decorative masonry wall, a 50 foot wide landscape greenbelt, and a 100' setback from all service drives.

Our development will have one (1) unloading door facing south at approximately 130' away from the residential property line, which would be the closest building opening in conflict with Section 10.037. We are requesting the variance to allow this door opening, as well as other door openings and a drive through pharmacy window facing the residential at distances from approximately 130 feet to 310 feet.

The Township's granting of this variance would not injure the public welfare or be detrimental to abutting property owners, since they will be very adequately screened, nor does it violate any state land division statute that we are aware of. Granting this variance would not nullify the purpose of the Ordinance or interfere with the comprehensive development plan of the Township, but rather this variance may be granted in all confidence that it furthers the harmonious development of the Township.

We thank you for your consideration of this request."

Mark McAlpine, representative, was in attendance and stated they were in favor of looking at other design alternatives. He indicated that he did not believe that this type of use creates the kind of noise concerns that a C-3 industrial type use would represent. As a shopping center we don't see the kind of noise issues, but recognize that is the basic concern. He referenced the back of the store not being sure what kind of decible level they need to design to or what kind of baffling devices would be considered acceptable, but would be willing to look at them.

Jerome R. Schmeiser, Planning Consultant, held a discussion regarding the design of the building so the doors won't have an adverse impact on the abutting residential property. A canopy over the backs of the doors do a great job in reducing the noise.

Mark McAlpine stated that there are other centers that have been without these extraordinary design requirements. Obviously, that poses a commerical hardship on property. He presented a rendering showing how, if that requirement were imposed, this 26 acre parcel would be limited to approxiamtley 3 acres of development. We will be asking for a tabling to work these issues out.

Jerome R. Schmeiser, Planning Consultant, stated that he did not see the building would have to move at all and still meet the ordinance. The doors would be moved to the side. There are ways to provide baffle walls that you would not lose a square inch.

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Mark McAlpine stated he would like to meet with the staff to discuss how the site could be redesigned. Further, he feels the staff fees should be waived so money is not wasted on engineers if there is a way to redesign the site that makes sense. Finally, he asked for a tabling to January 2006.

Public Portion: None.

MOTION by SLOSSON seconded by POPOVSKI to close the public portion.

MOTION carried.

MOTION by SLOSSON seconded by SELVA to table at the petitioner's request the variance request of Section 10.0347-Request to reduce the setback of a building that provides for door openings facing a residential area from 600 feet to 130 feet; Located on the southwest corner of 26 Mile Road and Romeo lank Road; Section 6; Romeo Plank Commons, LLC, Petitioner. Permanent Parcel No. 08-06-200-049. The variance is table to January 10, 2006.

MOTION carried.

14. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section: 10.0323(5)c-Request to reduce the parking spaces from 845 to 605.
Located on North side of Hall Road, approximately 680 feet east of Heydenreich;
Section 34; Frank Jonna, Petitioner. Permanent Parcel No. 08-34-300-027.

The item was tabled indefinitely as requested by the petitioners letter dated November 2, 2005.

15. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section: 10.0704D1-Request to reduce the setback from 55 feet to 34 feet.
Section 10.0704.D3-Request to reduce the setback from 25 feet to 4 feet.
Located on northeast and southeast corners of Heydenreich Road and Summerfield Drive; Section 27; Luigi Ferdinandi & Son Cement, Petitioner. Permanent Parcel No. 08-27-306-001.

Chairman FLORENCE read the findings and recommendations of November 3, 2005. They are as follows:

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The petitioner is requesting permission to construct 2 new brick signs at the entrance of the Summerfield Estates Subdivision #1 located on the northeast and southeast corners of Heydenreich and Summerfield Drive. The signs are located on private property and are approved by the owners of lots 1 and 65 of the Summerfield Estates Subdivision #1. The site plan submitted by the petitioner indicates that the current signs are located 4' from the property lines on Summerfield and Heydenreich Drive. The new signs will be situated in place of the existing signs. The petitioner continues that "the proposed location are as not to interfere with existing landscape areas, sprinklers, and electrical outlets".

A clear vision zone will be maintained, however, it will be maintained at 20' rather than 25'.

The reason given for location the signs in this area is so that they will not interfere with the spirnkler and electrical outlets. It is noted that the Summerfield Estates Subdivisions were platted without the 20' dedicated landscape areas and therefore the petitioner cannot comply with the standards of the 20' dedicated area.

RECOMMENDATION:

It is recommended that the variance request be approved. The petitioner should be reminded that this site plan must obtain approval from the Planning Commission. The purpose of the Planning Commission approval is to involve comments from the Water and Sewer Departments and the Township Engineer regarding utility lines, etc.

Member SLOSSON excused herself from this item since she is a resident of the subdivision.

The following letter of explanation was submitted by the petitioner dated October 10, 2005 as follows:

"We are constructing two new brick signs at the entrance of the Summerfield Estates. We would like to locate the new signs in place of two existing signs. The proposed locations are as not to interfere with existing landscaped areas, sprinklers and electrical outlets."

Mark Gerdy, President of the Homeowners Association, stated the current signs which are woods signs are in really bad condition and are very close to coming down on their own. Further, they feel this would fall within similar signs in the area and add to the fountain area being placed up front as well.

Public Portion: None.

MOTION by POPOVSKI seconded by SELVA to close the public portion.

MOTION carried.

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The following resolution was offered by SELVA and seconded by POPOVSKI:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that pursuant to the action of the Board to grant the requested variance of Section 10.0704(D)(1)-Request to reduce the setback from 55 feet to 34 feet; Located on the northeast and southeast corners of Heydenreich and Summerfield Drive; Section 27; Luigi Ferdinandi & Son Cement, Petitioner. Permanent Parcel No. 08-27-306-001. The variance was granted that this site plan must obtain approval from the Planning Commission. The purpose of the Planning Commission approval is to involve comments from the Water and Sewer Departments and the Township Engineer regarding utility lines, etc.

MOTION carried.

The following resolution was offered by SELVA and seconded by POPOVSKI:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that pursuant to the action of the Board to grant the requested variance of Section 10.0704(D)(3)-Request to reduce the setback from 55 feet to 34 feet; Located on the northeast and southeast corners of Heydenreich and Summerfield Drive; Section 27; Luigi Ferdinandi & Son Cement, Petitioner. Permanent Parcel No. 08-27-306-001. The variance was granted that this site plan must obtain approval from the Planning Commission. The purpose of the Planning Commission approval is to involve comments from the Water and Sewer Departments and the Township Engineer regarding utility lines, etc.

MOTION carried.

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16. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section: 10.0311-Request to reduce the width from 200' to 145.4'; Section 10.1805, to reduce the width from 200 feet to 145.40 feet.
Located on north side of Hall Road, 200 feet east of Romeo Plank Road; Section 33;
American Land Inc., Petitioner. Permanent Parcel Nos. 08-33-353-001 and 08-33-353-002.

Chairman FLORENCE read the findings and recommendations of November 3, 2005. They are as follows:

The petitioner is requesting permission to create a parcel of C-4 land with 145.4' of width rather than 200'.

The petitioner currently owns a commercial condominium with the intention of conveying a portion of it to be combined with other lands to create a Jaguar, Rover, Saab Auto Dealership. One of the remaining units of the commercial condominium with frontage on Hall Road will have a rear line width of 145.40'.

The Township Assessor has indicated that if the approval is granted, that the petitioner must submit a professional survey for the resulting parcel in accordance with the land division ordinance.

RECOMMENDATION:

It is recommended that the variance request be approved with the understanding that the petitioner will provide a document including the survey as required by the Assessor's Office, insuring the Township that the split/combination will be made with the Jaguar, Rover, Saab Auto Dealership said document to be approved by the Township Attorney and recorded with the Register of Deeds Office. Said split/combination is to take place within 60 days of the action of the Township Zoning Board of Appeals.

It is noted that the split/combination of the property in question will not adversely impact the balance of the condominium currently controlled by the petitioner. An auto wash and existing Burger King has approved plans for their development.

The following letter of explanation was submitted the petitioner dated October 28, 2005 as follows:

"The Macomb Land Company property had been developed into a condominium site, one unit of which is occupied by Burger King Restaurant, and a second by the Two Dollar Car Wash. Remaining units were vacant and were subsequently removed from the condominium project. Those units were combined with adjacent property owned by Elder Automotive Group.

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Applicant's Revised Site Plan has met the approval of all Township Departments with the exception of the Assessing Department (please see attached). The Assessing Department has stated that the proposed parcel does not meet the requirement of Zoning Ordinance No. 10 Section 10.0311, which requires that the creation of an L-Shaped parcel is prohibited unless the leg of the parcel is of a dimension equal to the width as required by the District. The parcel lies in a C-4, Commercial Highway District. Pursuant to Ordinance Section 10.0311, width of the leg of the parcel in a C-4 district must be 200 feet.

The "L" shape of this parcel allows a new, large commercial development to fit beside an existing one, and will promote, rather than have a negative impact, on future development. Compliance with the strict letter of Ordinance §10.0311 creates a practical difficulty and is unreasonably burdensome for the reason that Applicant will be prevented from developing the parcel as zoned; Applicant will be deprived of use of the property if strict compliance with Section 10.0311 is required. Conditions and circumstances are unique to this site; the L-shaped was proposed based upon its benefit to two adjacent commercial developments – one existing and one brand new – which lie beside one another in a C-4 District. Generally, variances should be granted where "[t]he conditions and circumstances unique to the property were not created by the owner, or his predecessor in title, within the time following the effective date of the zoning provisions," but variances may be granted in certain circumstances. *Puritan-Greenfield Ass'n v Leo*, 7 Mich App 659; 153 NW2d 162 (1967). The granting of this requested variance will do substantial justice to the Applicant, as well as to other property owners in the area. The variance will allow Applicant, as well as the adjoining parcel, to develop the commercial properties in optimum configuration and thus obtain the same full use of those properties as that enjoyed by others in the District. Therefore, the spirit and intent of the ordinance will be preserved and substantial justice done. Therefore, Applicant requests that variances be granted from Ordinance §10.0311,A,2 (and, therefore, from §10.1805,A,2)."

Bob Kirk, representative, was in attendance, and presented a diagram of the parcel for further review.

Public Portion: None.

MOTION by GALLAGHER seconded by POPOVSKI to close the public portion.

MOTION carried.

The following resolution was offered by GALLAGHER and seconded by SELVA:

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Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that pursuant to the action of the Board to grant the requested variance of Section 10.0311-Request to reduce the width from 200 feet to 145.4 feet; Located on the north side of Hall Road, 200 feet east of Romeo Plank Road. Section 33; American Land Inc., Petitioner. Permanent Parcel No. 08-33-353-001 and 08-33-353-002. The variance was granted with the understanding that the petitioner will provide a document including the survey as required by the Assessor's Office, insuring the Township that the split/combination will be made with the Jaguar, Rover, Saab Auto Dealership said document to be approved by the Township Attorney and recorded with the Register of Deeds Office. Said split/combination is to take place within 60 days of the action of the Township Zoning Board of Appeals.

It is noted that the split/combination of the property in question will not adversely impact the balance of the condominium currently controlled by the petitioner. An auto wash and existing Burger King has approved plans for their development.

MOTION carried.

The following resolution was offered by GALLAGHER and seconded by SELVA:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that pursuant to the action of the Board to grant the requested variance of Section 10.0311-Request to reduce the width from 200 feet to 145.4 feet; Located on the north side of Hall Road, 200 feet east of Romeo Plank Road. Section 33; American Land Inc., Petitioner. Permanent Parcel No. 08-33-353-001 and 08-33-353-002. The variance was granted with the understanding that the petitioner will provide a document including the survey as required by the Assessor's Office, insuring the Township that the split/combination will be made with the Jaguar, Rover, Saab Auto Dealership said document to be approved by the Township Attorney and recorded with the Register of Deeds Office. Said split/combination is to take place

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within 60 days of the action of the Township Zoning Board of Appeals.

It is noted that the split/combination of the property in question will not adversely impact the balance of the condominium currently controlled by the petitioner. An auto wash and existing Burger King has approved plans for their development.

MOTION carried.

17. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section: 10.0314C-Request to increase the height of the first floor elevation above the curb from 60 inches to 67 inches.
Located on the east side of Stonefield Drive, west of Romeo Plank Road, south of 22 Mile Road; Sound Building Company. Permanent Parcel No. 08-29-223-008.

Chairman FLORENCE read the findings and recommendations of November 3, 2005. They are as follows:

The petitioner is requesting permission to increase the height of the first floor from 60 inches to 67 inches. The petitioner also indicates that to meet the requirement of the zoning ordinance would be difficult and costly.

The property is zoned R-1.

The petitioner further indicates that the current basement has specific requirements that do not allow the basement to be below the flood plain.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the height requirement would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same height requirement which is evidence that the proper height would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the 60 inch height requirement. As a result the other property owners do not have the opportunity to make use of the 7 inches of height.

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There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the height from being maintained at 60 inches from the curb. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

3. The variance would amount to increasing the height from the curb by approximately 12%.

The following letter from SDA dated November 8, 2005 was read as follows:

“The comments and concerns set forth in this letter represent the opinions of both the Township Engineer and the Macomb Township Water and Sewer Department. We have reviewed the above-variance request and offer the following comments.

The petitioner is requesting a variance from the Zoning Ordinance (Article VII, Section 10.0704B3) in order to obtain a building permit. The petitioner is claiming that main line sanitary sewer, constructed as part of the Turnberry Pointe Subdivision, was installed shallower than proposed and accordingly, the sanitary lead for lot 1 was also constructed shallower than proposed; thus forcing him to construct the house with a higher finish floor than anticipated. The petition also references a requirement to keep the basement above the floodplain.

On the approved engineering plans (Turnberry Pointe Sub.), the elevation of the sanitary lead invert at the right-of-way line was proposed at 596.67. On November 3rd and 7th of 2005 field inspections, conducted jointly by Spalding DeDecker and Associates, Inc. and the Macomb Township Water and Sewer Dept., shows the invert in question to be 596.42, which is 0.25’ deeper than proposed. Additionally, as part of the house construction, it is the builder’s responsibility to extend the sanitary sewer lead from the right-of-way line to the house. Calculations based on data collected from the above referenced field inspections show the slope of the sanitary sewer lead to be approximately 2.8%. If the sewer lead was constructed at the minimum slope requirement of 1%, the house would be able to support a finish floor grade at 607.37, which would put the finish floor at 4.99’ above the lowest top of curb elevation (602.38 AB). As for the petitioners concerns with the basement elevation with regard to floodplain, our records show no encumbrance of floodplain for this development.

In summary, the sanitary sewer lead (up to the right-of-line) was constructed at an elevation that would allow a house to be constructed in accordance with the ordinance. Also, no floodplain exists within Turnberry Pointe Sub., thus, floodplain does not govern the basement elevation. Therefore, no hardship is evident and we recommend the variance request (Zoning Ordinance-Article VII, Section 10.0704B3) be denied.

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If you have any questions regarding this matter, please contact our office at your convenience.”

The following letter of explanation was submitted by the petitioner dated October 28, 2005 was also read as follows:

“This request is being made due to a hardship caused by the shallow sewer mains installed in a subdivision that was designed in 1998/1999, prior to Ordinance 10-21.

Ordinance 10-21, enacted July 2003, requires the finish first floor to be a maximum of 5 feet (60 inches) above the lowest curb. The current basement has specific requirements that don’t allow the basement to be below the flood plain allotment.

The placement of the sewer mains make it extremely difficult and costly to adhere to the 60 inch maximum first floor requirement.”

Hugo Mancini, petitioner, was in attendance and stated they had performed their own study approximately 2 days ago and was told by the developer that the piping with the sewer was .03’ shallower than it was supposed to be. Unfortunately, after we did our study, the contractor who dug the basement had done some wrong calculations and it was not caught until after preliminary grade and the walls were up and ready to start with our rough carpentry. Currently there is a 7’10” basement and in order to comply we would have to cut 7 inches of the basement wall which, would not give me a basement. It would give me a basement below 6’8” which, is far below the standards of Macomb Township or many counties or cities right now. We feel it is a hardship, it was an honest mistake. We were not aware of the ordinance and we do feel it is a hardship on us since it was an innocent mistake. Lastly, we have spoken with some of the corner homeowners indicating our situation and shot some grades regarding their finish floors and our finish floors and there was about 6 inches if difference from the neighbor next door and across the street. Its not that big of a difference regarding any problem with the swail or anything because of the way the site is situated.

Public Portion:

Dan Orsini, 48595 Stonefield Drive, referenced a comment of Colleen O’Connor, Township Attorney, from the August 3, 2005 meeting minutes, for a very similar variance request for a height limitation in which there is not practical difficulty. Lastly, he stated that along with him and the other homeowners present that the request be denied.

Dino Polson, excavator for the basement, stated he has been excavating basements in Macomb Township for over 15 years and unfortunately, when the existing sanitary lead it was higher than what it was supposed to be or proposed. Regardless of what we had to do we had to raise the basement in order to provide enough pitch for the sanitary sewer to work.

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In the meantime, I installed the sewer with the minimum requirements of a couple of inches of fall. It was inspected and approved and we had to lift the basement. We were going to lift the basement a foot which would have kept us under the variance. Mistakes are not an excuse, but as I stated earlier I have dug many basements and this is the first time I have ever had to come before the Zoning Board of Appeals. The house is up, its backfilled and whatever happens from here happens. The basement had to be raised.

MOTION by SLOSSON seconded by GALLAGHER to close the public portion.

MOTION carried.

Member GALLAGHER stated it is not this body's job to correct mistakes. It is our job to review the ordinance and determine if there is a practical difficulty. There is no practical difficulty, you made a mistake, and you have to correct it.

MOTION by GALLAGHER seconded by POPOVSKI to deny the variance request of Section 10.0314C-Request to increase the height of the first floor elevation above the curb from 60 inches to 67 inches; Located on the east side of Stonefield Drive, west of Romeo Plank Road; Section 29; Sound Building Co., Petitioner. Permanent Parcel 08-29-223-008. The variance was denied since there was no practical difficulty. The builder made a mistake by building the basement too high. It is not this bodies responsibility or job to correct the mistakes, the only mistakes this body can correct is if there was a change that occurred to the Zoning Ordinance that makes your property not useable. This is not that case. In addition Spalding DeDecker and Associates letter of November 8, 2005 and the Planning Consultants recommendations were also the basis as follows:

- 1. Compliance with the strict letter of the height requirement would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same height requirement which is evidence that the proper height would not be unnecessarily burdensome.**
- 2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the 60 inch height requirement. As a result the other property owners do not have the opportunity to make use of the 7 inches of height.**

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There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the height from being maintained at 60 inches from the curb. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

- 3. The variance would amount to increasing the height from the curb by approximately 12%.**

MOTION carried.

18. OLD BUSINESS

None.

19. NEW BUSINESS

None.

20. PLANNING CONSULTANTS COMMENTS

Jerome R. Schmeiser, Planning Consultant, stated there was a special meeting for November 29, 2005.

21. MOTION TO RECEIVE AND FILE ALL CORRESPONDENCE IN CONNECTION WITH THIS AGENDA.

MOTION by GALLAGHER seconded by SELVA to receive and file all correspondence.

MOTION carried.

ADJOURNMENT

MOTION by SLOSSON seconded by SELVA to adjourn the meeting at 9:38 P.M.

MOTION carried.

Respectfully submitted,

Brian Florence, Chairman

Dawn Slosson, Secretary
Beckie Kavanagh, Recording Secretary